IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 19, 2008 Session

MICHAEL LEE RIDDLE v. MICHELLE MARIE WOODS

Appeal from the Circuit Court for Greene County
No. 01CV608 Kindall T. Lawson, Judge

No. E2007-01521-COA-R3-CV - FILED AUGUST 19, 2008

The primary issue presented in this case is whether the evidence preponderates against the trial court's determination that a material change in circumstances had occurred and that it was in the child's best interest that custody be changed from the mother to the father. Following a hearing on the petition filed by the father, the trial court found there had been a material change in circumstances based on the mother's actions in taking the child to numerous doctors and mental health professionals, including a mental hospitalization facility, and falsely claiming that the child suffered from various mental and physical ailments, to such extent that the trial court agreed with an expert psychologist's opinion that the mother had committed child abuse. The trial court changed primary custody to the father upon its finding that the change was in the best interest of the child. After careful review, we hold that the evidence does not preponderate against the trial court's findings regarding material change of circumstances and best interest and consequently affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Raymond C. Conkin, Jr., Kingsport, Tennessee, for the Appellant, Michelle Marie Woods.

Edward Kershaw, Greeneville, Tennessee, for the Appellee, Michael Lee Riddle.

OPINION

I. Background

Michael Lee Riddle ("Father") and Michelle Marie Woods ("Mother") were involved in a dating relationship in 2000, which ultimately resulted in the birth of their child on July 9, 2000. The parties lived together in Tennessee for approximately one year after the child's birth, until Mother and child moved to Illinois in August of 2001. Father filed a petition to establish paternity and a proposed parenting plan on August 13, 2001. On August 19, 2002, the trial court entered an order

declaring Father's paternity of the child, naming Mother as primary residential parent, setting Father's child support, and incorporating a permanent parenting plan setting forth a visitation schedule for Father.

Three years later, on August 9, 2005, the trial court entered an order modifying the parenting plan to reflect the parties' mediated agreement to change the visitation schedule because the child had reached the age of school enrollment.

On March 15, 2007, Father filed a petition requesting the trial court to change custody by naming him primary residential parent with no visitation to Mother "until she seeks some type of help with her disorders," and requesting the trial court to issue a restraining order to prevent Mother from being around the child. Father's petition alleged, among other things, the following:

> In approximately February of 2007 Father was notified by Fatina M. Smith, a Youth Case Manager with The Pavilion in Illinois, that, without consulting Father in any means whatsoever, the minor child had been placed in that facility. The Pavilion is a psychiatric and chemical dependency treatment hospital in Illinois (see Exhibit A). The minor child was placed in the facility for various and multiple disorders that Mother <u>believes</u> that the child has;
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> After consultation with: the child's principal where Mother enrolled the child in the Illinois school; the child's therapist where Mother enrolled the child in Illinois; and based on various other factors that will be explained, Father is of the opinion that Mother suffers from a syndrome known as Munchausen's Syndrome by Proxy. This is a syndrome where parents . . . create and manifest ailments in their children so that their children will depend heavily upon the parent.
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> * * *
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> The evidence will show that subsequent to 2005 Mother has switched from therapist to therapist and doctor to doctor claiming that the child suffers from various and multiple syndromes including ODD, ADHD, Autism, Asperger's Syndrome, Depression, and Acid Reflux Disease;
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> * * *
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> After Mother's own chosen therapist, one of several, did not agree with Mother's multiple and varied diagnoses for her son, Mother removed the child from school and enrolled him in a psychiatric institute.

(Numbering omitted; emphasis in original).

Following a hearing, the trial court entered an order finding as follows:

> The Court finds that there is significant evidence that the minor child herein has unnecessarily been taken by Mother in Illinois to numerous different doctors and therapists after the August, 2002 Order in this cause;
>
> The Court further finds and agrees with the expert Psychologist, Dr. Charlton Stanley, that by taking the child to numerous doctors and therapists and ultimately putting the six year old child into a mental hospitalization facility (The Pavilion, Psychiatric Treatment Center, Illinois), which effectively led to the filing of Father's Petition, Mother committed child abuse;
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> The Court finds that Mother claims that the child suffers from various and significant disorders, however, the Court has no records to show that the child suffers from any disorders;
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> The Court finds that the expert Psychologist, Dr. Stanley, found specifically that the child did not suffer any form of Autism and appeared to be a normal child and the Court confirms that finding;
>
> The Court finds that there has been a significant material change in circumstances based on the strange and bizarre behaviors of Mother in regards to her medical/mental treatments for the child and the Court further finds that while with Mother, the child, according to Mother, was: suffering various mental illnesses and problems; taking different medications; and going to many different doctors, however, after having been placed with Father on an emergency basis, the child ceased seeing any doctors, and has begun excelling, not only in academics, but in sports.

The trial court further found it in the child's best interest to grant Father primary residential parent status, and awarded Mother visitation from 9:00 a.m. to 5:00 p.m. on Saturdays and Sundays every other week in addition to certain holidays, with directions to Mother not to remove the child from Greene County, Tennessee during her visitation. The trial court held that because of the expense incurred by Mother in traveling from Illinois to Tennessee for visitation, a downward deviation from the child support guidelines was warranted, and set Mother's child support at zero; Father did not oppose and has not appealed this decision.

II. Issues Presented

Mother appeals, raising the following issues as stated in her brief:

1. Whether the trial court erred in holding that the time frame for determining whether a material change of circumstances had occurred was from date of entry of the 2002 order rather than from the time of entry of the 2005 order.

2. Whether the trial court erred in finding that a material change of circumstances had occurred which justified a modification of the court's prior order designating Mother as the primary residential parent.

3. Whether the trial court erred in restricting Mother's residential time to visits every other week on Saturday and Sunday from 9:00 a.m. until 5:00 p.m. with all visits taking place in Greene County, Tennessee.

III. Analysis

A. Standard of Review

We review this non-jury case *de novo* upon the record of the proceedings below, with a presumption of correctness as to the trial court's findings of fact "unless the preponderance of the evidence is otherwise." Tenn. R. App. P. 13(d); *see also* ***Hass v. Knighton***, 676 S.W.2d 554 (Tenn. 1984). When a trial court has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings. ***Seals v. England/Corsair Upholstery Mfg. Co.,*** 984 S.W.2d 912, 915 (Tenn. 1999). There is no presumption of correctness with regard to the trial court's conclusions of law. ***Campbell v. Florida Steel Corp.,*** 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett,*** 860 S.W.2d 857, 859 (Tenn. 1993).

Trial courts are vested with wide discretion in matters involving custody of children. ***Edwards v. Edwards,*** 501 S.W.2d 283, 291 (Tenn. Ct. App. 1973). Accordingly, a trial court's decision regarding custody or visitation should be set aside only when it "falls outside the spectrum of rulings that might reasonably result from an application of the correct legal standards to the evidence found in the record." ***Eldridge v. Eldridge,*** 42 S.W.3d 82, 88 (Tenn. 2001). We are aware of the tremendous impact a custody decision has on the life of a child. Although trial courts must be able to exercise broad discretion in matters of child custody and visitation, they still must base their decisions on the proof and upon the appropriate application of the pertinent principles of law. ***D v. K***, 917 S.W.2d 682, 685 (Tenn. Ct. App. 1995). We will not reverse a trial court's decision regarding custody unless the record clearly demonstrates that the trial court has abused its discretion. ***Otis v. Cambridge Mut. Fire Ins. Co.,*** 850 S.W.2d 439, 442 (Tenn. 1992). A discretionary judgment of a trial court should not be disturbed unless it affirmatively appears that "the trial court's decision was against logic or reasoning, and caused an injustice or injury to the party complaining." ***Marcus v. Marcus,*** 993 S.W.2d 596, 601 (Tenn. 1999) (quoting ***Ballard v. Herzke,*** 924 S.W.2d 652, 661 (Tenn. 1996)).

The Tennessee Supreme Court has noted on several occasions that the details of custody and visitation with children are "peculiarly within the broad discretion of the trial judge." ***Eldridge,*** 42

S.W.3d at 85; ***Suttles v. Suttles***, 748 S.W.2d 427, 429 (Tenn. 1988). A determination of custody and visitation often hinges on subtle factors such as the parents' demeanor and credibility during the trial proceedings. ***Gaskill v. Gaskill,*** 936 S.W.2d 626, 631 (Tenn. Ct. App. 1996). Absent some compelling reason otherwise, considerable weight must be given to the trial court's judgment with respect to the parties' credibility and their suitability as custodians of children. ***Bush v. Bush,*** 684 S.W.2d 89 (Tenn. Ct. App. 1984). In cases such as this, the welfare and best interests of the child are of paramount concern. Tenn. Code Ann. § 36-6-106(a); ***Koch v. Koch***, 874 S.W.2d 571, 575 (Tenn. Ct. App. 1993).

B. Change of Custody

The governing statute in this case, Tenn. Code Ann. § 36-6-101(a)(2)(B), provides that in cases wherein a party seeks to modify an existing custody arrangement, the threshold issue is whether a material change in circumstances has occurred since the initial custody determination:

> If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances that make the parenting plan no longer in the best interest of the child.

Tenn. Code Ann. § 36-6-101(a)(2)(B).

We recognize that the circumstances of children and their parents inevitably change – children grow older, their needs change, one or both parties remarry. But not all changes in the circumstances of the parties and the child warrant a change in custody. There are no hard and fast rules for when there has been a change of circumstance sufficient to justify a change in custody. ***Cranston v. Combs,*** 106 S.W.3d 641, 644 (Tenn. 2003). A court's decision with regard to modification of custody is contingent upon the circumstances presented, and the court should consider whether:

1) the change occurred after the entry of the order sought to be modified,

2) the changed circumstances were not reasonably anticipated when the underlying decree was entered, and

3) the change is one that affects the child's well-being in a meaningful way.

Kendrick v. Shoemake, 90 S.W.3d 566, 570 (Tenn. 2002); ***Blair v. Badenhope,*** 77 S.W.3d 137 (Tenn. 2002); ***Cranston,*** 106 S.W.3d at 644. Custody decisions are not intended and should not be designed to reward parents for prior virtuous conduct, nor to punish them for their human frailties or past missteps. ***Oliver v. Oliver,*** No. M2002-02880-COA-R3-CV, 2004 WL 892536, at *2 (Tenn. Ct. App. M.S., filed Apr. 26, 2004); ***Kesterson,*** 172 S.W.3d at 561; ***Earls v. Earls,*** 42 S.W.3d 877, 885 (Tenn. Ct. App. 2000). The party seeking to change an existing custody arrangement has the burden of proving by a preponderance of the evidence that there has been a material change of circumstances. Tenn. Code Ann. § 36-6-101(a)(2)(B).

In this case, Mother argues as an initial matter that the trial court erred in ruling that it would consider whether a material change of circumstances occurred after the 2002 entry of the first order awarding her custody, rather than considering only whether there had been a material change of circumstances after the 2005 entry of the order modifying Father's visitation. We note that the 2005 order did not revisit the issue of who was the primary residential parent, but merely adjusted Father's visitation schedule as mediated and agreed by the parties to reflect the reality that the child was starting school. Under this circumstance, it is unlikely that the trial court's hearing and considering proof regarding pertinent events occurring between 2002 and 2005 would be reversible error. But in any event, the resolution of the issue of the exact time frame the trial court should have examined is immaterial to the outcome of this appeal because as discussed further below, the evidence supports a finding that there was a material change of circumstances following the 2005 order that justified the trial court's decision to modify the parenting plan to grant Father primary custody.

Mother testified that she believed the child suffered from acid reflux disease for which he was taking medication, Oppositional Defiant Disorder, Asperger's Syndrome (a form of autism), anxiety, depression, loss of appetite, nervousness, and inability to sleep, for which she occasionally gave the child melatonin. Mother stated that at one point she thought the child had an allergy to gluten, but she no longer believed that at the time of the hearing. Mother testified that she had taken the child to at least 8 different doctors, 5 of which were in the psychiatric or mental health field. As the trial court found, however, Mother provided scant, if any, medical documentation that the child had actually been diagnosed with the disorders from which she believed the child was suffering. Father testified that he had seen no signs of these disorders in the child and that the child was able to function and interact normally with others without medication when he was visiting Father.

After the child started school, in first grade he received three "unsatisfactory" marks on his report card and several other "S-" grades that indicated he was "having trouble with basic requirements." Mother testified that after this she decided that the first grade teacher was not adequate and had excessively high expectations for the students, so she visited the classroom and observed the teacher on at least 20 occasions. Mother further testified as follows regarding her interactions with school officials:

> Q: In addition to doing that, you started going to school during the day and standing at a fence and watching your son. Correct?
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> A: Among other things, yes.

Q: You would go stand at the fence and stare at your son so often that eventually the school said, "Listen, you've got to stop doing this." Correct? Yes?

A: Yes and no.

Q: Did they ask you to stop coming and just staring at your son?

A: They didn't phrase it that way, no. They just said that perhaps I should come less often.

Q: Did they tell you that your son was never going to develop a peer relationship if you were there staring at him when he's trying to play with other students?

A: Again, that's not how they phrased it. It was just they wanted him to develop relationships without me there.

Q: Did they say, "It's unlikely he'll ever interact with kids if you're here every day staring at him?" Did they ever say anything like that to you?

A: Similar, yes.

Although the child was able to pull up his grades after receiving the three unsatisfactory marks, in 2007 Mother decided to place the child in the Pavilion psychiatric treatment center in Illinois. Mother did not consult with or inform Father of her decision, notwithstanding that the parenting plan approved by the trial court provided that major decisions involving the child's non-emergency health care would be made jointly by the parties. Father immediately drove to Illinois upon discovering that Mother had enrolled the child in the psychiatric treatment facility, and Father's petition to change custody followed shortly thereafter. On March 16, 2007, the trial court ordered that the parties follow Father's proposed temporary parenting plan attached to his petition, which effectively granted Father temporary custody of the child with supervised visitation to Mother pending a hearing.

The hearing took place on June 8, 2007. Father presented the testimony of numerous witnesses, including himself, the child's teacher at his Greeneville elementary school, the school's cafeteria worker and his church's youth director, the child's baseball coach, Sunday school teacher, and a regular babysitter, all of whom testified to the effect that the child behaved in a normal and fairly outgoing manner, had no unusual problems interacting with others, and showed no signs of a mental or emotional disorder. The child's baseball coach testified that he was doing very well on the baseball team and that the coach had at least once awarded the child a game ball for best effort and hustle in the game. The child's school teacher testified that the child had been awarded an Outstanding Student award for excellence in reading and that he was doing very well in school. The

teacher further stated that Father was a "very caring" and involved parent and that Father had received an Outstanding Parent award from the school.

Mother testified that she continued to believe that the child suffered from Asperger's Syndrome in addition to other ailments. At the hearing, however, Mother did not provide any expert medical testimony or documentation supporting her beliefs. Father presented the testimony of Dr. Charlton Stanley, a psychologist who met with and evaluated the child on three occasions. Dr. Stanley described Asperger's Syndrome as a form of autism wherein the patient has great difficulty relating to and interacting with other people, and testified that "if this child has Asperger's Syndrome, then so do I because he's exceedingly normal." Dr. Stanley testified that he detected no mental disorders in the child based on his observations and evaluations, and that he could state without qualification that the child did not have Asperger's Syndrome. He further stated that a consequence of placing a normal child in a psychiatric hospital would be "if you aren't a hypochondriac going in, you'll be a hypochondriac coming out."

Dr. Stanley also prepared a forensic psychological report that stated as follows in pertinent part:

> Frankly, I cannot see, by any stretch of the imagination, that this child has any form of autism. When I talked with him, his affect was bright and appropriate, eye contact very good, social interaction did not show any impairment and he was spontaneous verbally. It is very difficult to carry on a conversation with autism or Asperger's patients, but this child shows no such limitation.
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> When [Father] told me that [the child] took showers with his mother and slept with her, I took his account with a grain of salt. I have heard similar allegations before when custody or visitation has become an issue. When I had my private conversation with [the child], I approached the topic gingerly, working hard to avoid leading him. I asked him to tell me about his home in Illinois and his room. He rambled around some, and finally mentioned that he did not like to sleep alone and slept with his mother. He also cheerfully described taking showers with his mother. He likes to be helpful to her. In his description, he says that she sometimes asks him to get the soap for her. He held his hand directly in front of himself with an imaginary bar of soap on it, saying, "there you are," with a big grin. There was no indication that he was trying to pass it around a shower curtain or door without looking.
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> * * *
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> There seem to be two things going on here. This child has been taken to numerous doctors and counselors, with various unusual diagnoses, especially in view of the fact that he presents clinically as being

> exceedingly normal. He is a vivacious, alert and cheerful child. There are some elements in the data that I have been provided, plus what was obtained in the interviews, that suggest at least some elements of Munchausen's by Proxy (MBP).[1]
>
> Also, I am alarmed by the sexualizing of this child. Keep in mind that this information came from [Father] initially and was confirmed by [the child]. I take it at face value. There is clearly an unhealthy enmeshment between the child and his mother at the present time. This comes very close to a form of sexual abuse of a child by an adult.

Based on the foregoing summary of the evidence in the record, we find that the evidence does not preponderate against the trial court's conclusion that there was a material change in circumstances warranting the change of primary custody to Father, and that the change was in the best interest of the child. It is clear that the trial court's determinations were driven in significant part by its evaluations of the credibility and demeanor of the various witnesses. Further, the evidence in the record confirms the trial court's finding that since being placed in Father's care, the child has done very well in his academic and athletic endeavors and is generally thriving.

C. Restrictions on Visitation

Mother argues that the restrictions placed on her visitation by the trial court were unduly strict and not warranted by the circumstances. We disagree. The trial court awarded Mother visitation on Saturdays and Sundays every other week from 9:00 a.m. until 5:00 p.m., with directions to Mother not to remove the child from Greene County. As we have already noted, the details of custody and visitation with children are "peculiarly within the broad discretion of the trial judge." ***Eldridge***, 42 S.W.3d at 85; ***Suttles,*** 748 S.W.2d at 429. Dr. Stanley testified at the hearing that he did not believe that the child would be safe if returned to Mother. He further stated that "I'm very, very concerned because the things that have been alleged really come into the area of child abuse. . . . I wouldn't be comfortable in letting her be alone with the child." In setting limitations on Mother's visitation, the trial court was obviously concerned with the child's safety and welfare, and we cannot say that the trial court's exercise of caution in this regard was an abuse of its discretion.

IV. Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed in its entirety. Costs on appeal are assessed to the Appellant, Michelle Marie Woods.

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[1] Dr. Stanley's report stated that "[t]he meaning of Munchausen's by Proxy means that the parent, for reasons unknown, will try to get a child or person in their care to be diagnosed with an illness of some kind. There seems to be some kind of odd gratification from being needed and indispensable to the 'sick' child."

SHARON G. LEE, JUDGE